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10 Attorneys for Christina Lovato, Chapter 7 Trustee

11 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF NEVADA

12 In re
 13 DOUBLE JUMP, INC.
 14 Debtor.

Lead Case No.: BK-19-50102-gs
 (Chapter 7)

Substantively Consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

17 **TRUSTEE'S EX PARTE APPLICATION**
 18 **TO EMPLOY MELISSA DAVIS AND**
KAPILAMUKAMAL, LLP AS EXPERT

20 **Hearing Date:** N/A
Hearing Time: N/A

23 Christina Lovato, chapter 7 trustee ("**Trustee**") for the substantively consolidated debtor
 24 estates of Double Jump, Inc., DC Solar Solutions, Inc., DC Solar Distribution, Inc., and DC Solar
 25 Freedom, Inc. (together, "**DC Solar**" or the "**Debtors**"), pursuant to 11 U.S.C. § 327(a) and
 26 F.R.B.P. 2014(a), respectfully requests that this Court enter an Order authorizing the employment
 27 of Melissa Davis and the firm of KapilaMukamal, LLP (together, the "**Applicant**") as a consulting
 28 expert who may be a testifying expert in the future if / when the Trustee decides it necessary and

1 appropriate. This Application is supported by the separately filed Declaration of Melissa Davis,
 2 and as permitted by F.R.E. 201, the Trustee also requests that the Court take judicial notice of the
 3 papers and pleadings on file in these consolidated cases.

4 **BACKGROUND**

5 1. In late January and early February 2019, the Debtors filed their respective chapter
 6 11 petitions. On March 22, 2019, each of the chapter 11 cases were converted to chapter 7 and the
 7 Trustee was appointed chapter 7 trustee for the (then) jointly administered estates. [ECF Nos. 439
 8 and 440].

9 2. In accordance with her duties under 11 U.S.C. § 704, during the first two years of
 10 her appointment, Trustee Lovato worked extensively toward liquidating the tangible assets of the
 11 Debtors' estates. In addition, as part of her efforts to investigate the financial affairs of the Debtors,
 12 in late 2019 the Trustee sought and then obtained approval to employ the law firm of Meland,
 13 Russin & Budwick, now known as Meland Budwick, P.A. ("MB"), as special litigation counsel.
 14 [ECF No. 1502].

15 3. Following multiple Rule 2004 examinations, informal interviews of potential
 16 witnesses, and the review of many thousands of documents, the Trustee filed over 40 adversary
 17 proceedings seeking recovery of monies or property for the benefit of the Estates. Many of those
 18 adversary proceedings have been resolved, but some remain pending, and the Trustee intends to
 19 file additional adversary proceedings.¹

20 4. On February 3, 2021 and July 20, 2021, the Court entered Orders extending the
 21 deadlines under 11 U.S.C. §§ 108 and 546. [ECF Nos. 2527 & 2786].

22 5. On March 1, 2021, the Court entered its Order for Substantive Consolidation Of
 23 The Chapter 7 Estates Of Double Jump, Inc., DC Solar Solutions, Inc., DC Solar Distribution, Inc.,
 24 and DC Solar Freedom, Inc. [ECF No. 2613].

25 6. On November 15, 2021, this Court conducted a status conference on the pending
 26 adversary proceedings and matters related to Estate litigation. This Court has scheduled a further
 27 status conference on February 18, 2021; however, the Trustee intends to request that the Court
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¹ The Trustee has entered into tolling agreements with a number of potential litigation targets.

1 continue the February status conference for one month and a time convenient for the Court for
 2 reasons which include challenges that have arisen from the COVID-19 pandemic as well as the
 3 practical need to allow the Applicant an opportunity to be retained and move forward performing
 4 its services.²

5 **Estate Litigation Targets**

6 7. As part of her duties, the Trustee has investigated potential Estate claims against a
 7 number of litigation targets sounding in avoidance and tort (“***Litigation Targets***”).

8 8. Of these Litigation Targets, (1) many received pre-petition transfers of property of
 9 the Debtors; (2) some provided pre-petition professional and/or financial services for one or more
 10 of the Debtors; and (3) some fall into both categories.

11 9. As part of her investigation into each of the Litigation Targets, the Trustee has: (1)
 12 taken examinations pursuant to R. 2004; (2) reviewed documents provided pursuant to R. 2004;
 13 (3) reviewed documents obtained otherwise; and/or (4) interviewed witnesses informally.

14 10. The Trustee has had good faith settlement dialogue with nearly all the Litigation
 15 Targets. The Trustee has consensually resolved claims against many Litigation Targets, with Court
 16 approval for the benefit of creditors.³

17 **Retention of the Applicant**

18 11. In connection with the Trustee’s claims against the Litigation Targets, and upon the
 19 recommendation of her professionals, the Trustee believes it is necessary and appropriate to
 20 engage the services of the Applicant as a consulting expert who may be a testifying expert in the
 21 future if / when the Trustee decides it necessary and appropriate, related to the forensic accounting
 22 and financial review of the fraud perpetrated by Jeff Carpoff through the Debtors,⁴ the financial

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25 ² This Court can take judicial notice of COVID-19 and its effect on matters. *See George v. Diaz*,
 26 2020 WL 2542020, *2 (N.D. Cal. May 19, 2020); *see also Herrera v. Aramark Servs., Inc.*, 2021
 27 WL 304554, *2 (D. Nev. Jan. 29, 2021) (“[M]oving the discovery deadlines back as requested
 herein is a reasonable request as COVID-19 is continuing to slow down and/or impact almost every
 aspect of life and it has delayed completion of discovery on the current schedule despite the recent
 relaxing of certain restrictions and practices by both the Courts and state government.”).

28 ³ *See generally*, docket.

29 ⁴ *See e.g.*, *U.S.A. v. Carpoff*, 20-00017 (E.D.Ca.).

1 status of the Debtors at various points in time, and other services as the Trustee may reasonably
 2 request on related issues.

3 12. Ms. Davis is a Certified Public Accountant, a Certified Fraud Examiner, and a
 4 Certified Insolvency and Restructuring Advisor. Ms. Davis has significant expertise and
 5 experience in investigating, identifying, and opining on matters related to the attributes of Ponzi
 6 schemes and other fraudulent schemes. Ms. Davis also has significant expertise opining on matters
 7 related to an entity's value, loss of value, indebtedness, and damages.

8 13. For example, in January 2021 Ms. Davis was a panelist in a speaking engagement
 9 titled "*Distressed Valuation and Solvency Analysis*" for the FICPA 2021 Valuation, Forensic
 10 Accounting & Litigation Services Conference. And in October 2016, Ms. Davis was a panelist at
 11 the IWIRC 23rd Annual Fall Conference and spoke on "*The Dissection of a Ponzi Scheme*."

12 14. Further, Ms. Davis' publications include "*Fraudulent Transfer Claims in Claw*
 13 *Back Litigation*," published in the Law Journal Newsletters (The Bankruptcy Strategist) in May
 14 2021 and "*An Insolvency Primer*" for the American Bankruptcy Institute, Commercial Fraud
 15 Committee in March 2021.

16 15. Further, Ms. Davis was the Co-Chair of the Commercial Fraud Committee for the
 17 American Bankruptcy Institute from 2016-2019 and on the Advisory Board for the Caribbean
 18 Insolvency Symposium from 2016-2021.

19 16. Generally:

20 A Ponzi scheme is an arrangement whereby an enterprise makes payments to
 21 investors from the proceeds of a later investment rather than from profits of the
 22 underlying business venture, as the investors expected. The fraud consists of
 23 transferring proceeds received from the new investors to previous investors,
 24 thereby giving other investors the impression that a legitimate profit making
 25 business opportunity exists, where in fact no such opportunity exists.⁵

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⁵ *In re Agric. Research & Tech. Grp., Inc.*, 916 F.2d 528, 531 (9th Cir. 1990).

1 17. Further, although Ponzi schemes are revealed by certain characteristics, such as
 2 payment of earlier investors with funds from later investors, “*the manner in which such schemes*
 3 *are conducted is limited only by the imagination of the perpetrator.*”⁶

4 18. Whether a fraudulent scheme is a Ponzi scheme is significant because of, among
 5 other things, the “*Ponzi Presumption*” of actual intent and insolvency.⁷

6 19. The Trustee intends to file a motion seeking to establish that Jeff Carpoff (possibly
 7 with others) perpetrated a Ponzi scheme through the Debtors. This may take the form of a motion
 8 for partial summary judgment in certain of the Trustee’s adversary proceedings. Bankruptcy
 9 trustees often utilize expert witnesses to opine that a Ponzi scheme was perpetrated through an
 10 entity in support of a dispositive motion (and/or at trial). The Trustee anticipates that Ms. Davis
 11 may render an opinion informing whether a Ponzi scheme was perpetrated through the Debtors.

12 **Application To Employ**

13 20. Ms. Davis is a Partner at KapilaMukamal, LLP and her hourly rate for this
 14 engagement is \$530. As appropriate, Ms. Davis uses other persons at her firm at an hourly rate in
 15 the range of \$150-600. Out-of-pocket expenditures will be charged separately.

16 21. If the Applicant’s retention is approved by this Court, the Trustee intends to file a
 17 motion seeking to establish monthly compensation procedures pursuant to 11 U.S.C. §§ 105 and
 18 331 as has been implemented for certain other Estate professionals.⁸ However, unless and until
 19 those procedures are approved, the Applicant will apply for compensation for professional services
 20 rendered and reimbursement of expenses incurred in compliance with the applicable provisions of
 21 the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, guidelines established by the Office
 22 of the U.S. Trustee for Region 17 which includes the District of Nevada and any other applicable
 23 procedures and orders of the Court.

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25 ⁶ *In re LLS Am., LLC*, 2013 WL 3305393, *7 (Bankr. E.D. Wash. July 1, 2013) (internal citation
 26 omitted), R&R adopted as modified, 2013 WL 4480667 (E.D. Wash. Aug. 19, 2013); *see also*
 27 *Hayes v. FPI Nursery Partners 1984-I*, 922 F.2d 844 (9th Cir. 1991) (“As this case shows, Ponzi
 28 schemes are protean, for the inventiveness of the human mind makes permutations in their form
 virtually infinite.”); *In re Singh*, 2019 WL 1231146, *7-8 (B.A.P. 9th Cir. Mar. 14, 2019).

7 ⁷ *In re Nat'l Consumer Mortg., LLC*, 2013 WL 164247, *11 (D. Nev. Jan. 14, 2013).

8 ⁸ *See* ECF No. 2754.

1 22. The Trustee believes that the Applicant is well qualified to be retained for this
2 specific engagement. Ms. Davis *curriculum vitae* is attached as **Exhibit 1**.

3 23. To the best of the Trustee's knowledge, Applicant does not (i) have any connection
4 with the Debtors or the Estate, or (ii) represent any interest adverse to the Debtors or the Estate.

5 24. Ms. Davis separately filed declaration demonstrates that she and KapilaMukamal,
6 LLP are disinterested as required by 11 U.S.C. § 327(a) and F.R.B.P. 2014.

7 25. The Trustee believes that the Applicant's retention is in the best interests of the
8 Estate and its creditors.

9 26. The Trustee has previously retained GlassRatner Advisory & Capital Group, LLC
10 dba B.Riley Advisory Services ("**B.Riley**") as an estate professional.⁹ Since 2019, B.Riley has
11 performed necessary and important consulting, advisory, and forensic services on a wide range of
12 issues and matters for the benefit of the estate. While B.Riley certainly is qualified to effectively
13 perform the services that will be performed by Ms. Davis, the Trustee in her business judgment
14 believes it is prudent to retain Ms. Davis for, among other reasons, the need to avoid potentially
15 protracted disputes and litigation with adversary defendants as to the scope and protection of
16 confidential and privileged communications that the Trustee and her team have had with B.Riley
17 professionals. The Trustee does not believe those communications are discoverable, but wishes to
18 avoid any delay, expense, and distraction that may be created by one or more defendants for tactical
19 reasons.

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28 ⁹ ECF No. 611.

1 **WHEREFORE**, the Trustee respectfully requests the Court enter an Order authorizing the
2 retention of the Applicant as of the date this Application is filed, and for all other relief this Court
3 deems just and proper.

4 Dated: January 5, 2022

5 **HARTMAN & HARTMAN**

6 /s/ Jeffrey L. Hartman
7 Jeffrey L. Hartman, Esq.
8 Attorney for Trustee Christina W. Lovato

9 **MELAND BUDWICK, P.A.**

10 /s/ Solomon B. Genet
11 Michael S. Budwick, Esq.
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13 Gil Ben-Ezra, Esq.
14 Alexander E. Brody, Esq.
15 Attorney for Trustee Christina W. Lovato
16 (All admitted pro hac vice)